SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1360-14T1

HAMPTON TOWNSHIP,

Petitioner-Respondent,

and

DAVID PIERSON,

Petitioner-Respondent/
Cross-Appellant,

v.

SUSSEX COUNTY AGRICULTURE
DEVELOPMENT BOARD,

Respondent,

and

BRODHECKER FARM, LLC,

Respondent-Appellant/
Cross-Respondent.

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Argued September 27, 2016 – Decided October 24, 2016

Before Judges Reisner, Rothstadt, and Sumners.

On appeal from the State Agriculture Development Committee, Docket No. 852.

Ursula H. Leo argued the cause for appellant/cross-respondent Brodhecker Farm, LLC (Laddey, Clark & Ryan, LLP, attorneys; Ms. Leo, on the briefs).

David Pierson, respondent/cross-appellant, argued the cause pro se.

Francis J. McGovern argued the cause for respondent Hampton Township (McGovern & Roseman, P.A., attorneys; Mr. McGovern of counsel and on the brief).

Jason T. Stypinski, Deputy Attorney General, argued the cause for respondent State Agriculture Development Committee (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Mr. Stypinski, on the brief).

PER CURIAM

This appeal concerns a dispute over what items Brodhecker Farm, LLC (the Farm) is entitled to sell at a farm market located on its commercial farm in Hampton Township (the Township).[1] The

[1] The Right to Farm Act (RTFA), N.J.S.A. 4:1C-1 to -10.4, permits a commercial farm to "[p]rovide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards[.]" N.J.S.A. 4:1C-9(c). The market's operation must comply with relevant state and federal laws and must not "pose a direct threat to public health and safety." N.J.S.A. 4:1C-9. A "farm market" is "a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income." N.J.S.A. 4:1C-3; see N.J.A.C. 2:76-2A.13(b). However, "if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm." Ibid.

Farm appeals, and David Pierson cross-appeals, from an October 3, 2014 final decision issued by the State Agricultural Development Committee (SADC or agency), granting in part and denying in part the Farm's application for a site-specific agricultural management practice (SSAMP) determination. See N.J.A.C. 2:76-2.3.

The Farm is located in an agricultural/residential zone. The Township, which previously cited the Farm for violating the local zoning ordinance, agrees with the SADC's decision and urges us to affirm. The Farm contends that the SADC's decision is too restrictive. Mr. Pierson, who lives across the road from the Farm, argues that the decision is too permissive.

The SADC issued a forty-page, single-spaced decision addressing in detail the history of this dispute, the pertinent evidence, the issues raised by all parties, and the agency's factual findings and legal conclusions. That exhaustive discussion need not be repeated here. The decision includes an analysis of every product in dispute – from manure spreaders and tractors to livestock feeders and turn-out sheds – and reflects the SADC's agricultural expertise and interpretation of its governing statute and regulations.

The agency interpreted the phrase "products that contribute to farm income," N.J.S.A. 4:1C-3, as requiring some reasonable nexus between the sale of the Farm's own agricultural products and

the other items sold in the farm market. See N.J.A.C. 2:76-2A.13(b) (defining "[p]roducts that contribute to farm income"). For example, the SADC concluded that the Farm market could sell turn-out sheds, used to shelter cattle in the fields, and fences used to pen in cows, because the Farm sold cattle. On the other hand, the Farm could not sell gazebos, used as reviewing stands at horse shows, because the Farm did not sell horses. Nor could the Farm operate a tractor dealership under the guise of operating a farm market. The agency reasoned that the statutory definition of a "farm market" as selling "products that contribute to farm income" did not "contemplate the commercial farmer as a sales dealer of agricultural motor vehicles. . . ."[2] See N.J.S.A. 4:1C-3.

We owe substantial deference to the SADC's expertise. See Aqua Beach Condo. Ass'n v. Dep't Cmty. Affairs, 186 N.J. 5, 16 (2006); Twp. of S. Brunswick v. State Agric. Dev. Comm., 352 N.J. Super. 361, 368 (App. Div. 2002). We also owe deference to the agency's construction of its own regulations, and its reasonable interpretation of the statute which the Legislature entrusted it to enforce. SJC Builders, LLC v. N.J. Dept. of Envtl. Prot., 378 N.J. Super. 50, 54 (App. Div. 2005). It is not our role to judge

[2] The Farm was not selling off its own used equipment, but was bringing in new tractors and selling them.

the wisdom of the agency's policy decisions. In re Adoption of Amendments to Water Quality Plans, 435 N.J. Super. 571, 583-84 (App. Div.), certif. denied, 219 N.J. 627 (2014).

After reviewing the entire record in light of those legal standards, we conclude that the SADC's statutory and regulatory interpretations strike a reasonable balance between the interests of the Farm in remaining economically viable and the interests of the municipality and the Farm's neighbors in protecting the local zoning. See Twp. of Franklin v. Den Hollander, 172 N.J. 147, 152 (2002). The decision is supported by substantial credible evidence and is not arbitrary or capricious. See Barrick v. State, 218 N.J. 247, 259-60 (2014). The arguments raised by appellant and cross-appellant were properly addressed by the SADC and, except to the extent addressed herein, their appellate contentions are without sufficient merit to warrant discussion in a written opinion.[3] R. 2:11-3(e)(1)(E). We affirm substantially for the

[3] We decline to address issues that were not raised before the SADC. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Those issues include Mr. Pierson's arguments concerning soil erosion and an accountant's report. However, because Mr. Pierson has raised a constitutional claim, we note that on the facts presented here, where he has no restrictive covenant and the alleged obstruction is on someone else's property, he has no constitutional right to an unobstructed view. In re Riverview Dev., LLC v. Waterfront Dev. Permit, 411 N.J. Super. 409, 430 (App. Div.), certif. denied, 202 N.J. 347 (2010). The issue does not warrant further discussion. R. 2:11-3(e)(1)(E).

reasons stated in the SADC's comprehensive decision. We add these comments.

In its appeal, the Farm contends that the SADC erred in applying regulations which were in effect at the time the SADC rendered its decision, but which had not yet been adopted at the time the Farm submitted its application. See N.J.A.C. 2:76-2A.13(b) (effective April 7, 2014). The Farm's reliance on the time of application rule, as set forth in N.J.S.A. 40:55D-10.5, is misplaced. That statute applies to municipal agencies deciding land use applications under local zoning laws. See Jai Sai Ram, LLC v. S. Toms River Planning/Zoning Bd., 446 N.J. Super. 338, 343 (App. Div. 2016). It does not apply to State agencies such as the SADC in enforcing State laws. In deciding this case, the SADC properly followed the time of decision rule. See In re Protest of Coastal Permit Program Rules, 354 N.J. Super. 293, 333 (App. Div. 2002); State, Dep't of Envtl. Prot. v. Midland Glass Co., 145 N.J. Super. 108, 119 (App. Div. 1976).

We also agree with the SADC that the administrative law judge (ALJ) made legal errors in the initial decision, and therefore the SADC properly rejected the ALJ's conclusions which were affected by those legal errors. In particular, the ALJ excused some significant weaknesses in the Farm's application, by reasoning

that the Township and Pierson had the burden of proof and failed to disprove the Farm's case with respect to those issues.

To put the matter in context, the Farm initially applied to the Sussex County Agriculture Board (County Board or Board) for approval of its SSAMP. Approval would allow the Farm to engage in marketing activities that would otherwise be prohibited by the local zoning ordinance. See N.J.S.A. 4:1C-9. The County Board approved the application, and the Township and Pierson appealed to the SADC, which sent the case to the Office of Administrative Law for an evidentiary hearing.

The ALJ reasoned that because the Board's decision was entitled to deference, the Township and Pierson had the burden of disproving the Farm's claims. The SADC disagreed with the ALJ, because the County Board's decision was insufficiently specific, and "lacked sufficient findings of fact and conclusions of law required of an administrative agency considering such a complex case." The agency noted, for example, the Board's uncritical acceptance of the Farm's report setting forth alleged percentages of relevant sales, with no "dollar figures or other proof of cash receipts."

The SADC also noted its concern that the Board did not take a balanced view of the interests of all parties:

> [T]he [County Board's] apparent impatience with [the Township's] and Pierson's presentations, questioning and testimony and its response to their concerns bear particular scrutiny because RTFA protection must be based on an articulated balancing of the commercial farmer's interest in conducting agricultural practices against those of the municipality, expressed in local ordinances, and those of adjoining property owners.

Therefore, the SADC concluded that the Board's decision was not entitled to deference and the burden of proof remained with the Farm. After making its own evaluation of the evidence, the SADC found that the Farm failed to establish its right to sell certain products under the RTFA and regulations.

We agree with the SADC that the County Board's determination was unworthy of deference, for the reasons stated in the SADC's decision. See Lyons Farms Tavern, Inc. v. Newark Mun. Bd. of Alcoholic Beverage Control, 55 N.J. 292, 303 (1970). In construing the RTFA and the agency's implementing regulations, the SADC also reasonably considered the balance between the Farm's interests and those of its neighbors, as well as the municipality's zoning concerns. See Den Hollander, supra, 172 N.J. at 151-53.

Finally, with respect to the cross-appeal, we note that the approvals which the SADC granted were conditioned on the Farm complying with "municipal standards" concerning parking and traffic, and that "any proposed building must comply with relevant

provisions of the [Uniform Construction Code]." See N.J.A.C. 4:1C-9. The Board made clear that the Farm "does not have RTFA protection for the retail farm market" or for the sales-related buildings in question until it complies with those requirements. Those conditions adequately addressed Mr. Pierson's expressed concerns about the Farms' compliance with public safety requirements.

Affirmed.